

STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEALS
(Cooper, Fort Hood and R.S. Gribbs, JJ.)

JAMES D. AZZAR,

Supreme Court Docket No.: 130310

Plaintiff-Appellant, and

Court of Appeals Docket No.: 260438

PROCESSING SOLUTIONS, LIMITED,

Kent County Case No.: 03-11760-NZ

Plaintiff,

vs.

THE CITY OF GRAND RAPIDS,

Defendant-Appellee, and

BERNARD C. SCHAEFER, and
ROBERT J. KRUIS,

Defendants.

REPLY BRIEF ON APPEAL OF
PLAINTIFF-APPELLANT JAMES D. AZZAR

ORAL ARGUMENT REQUESTED

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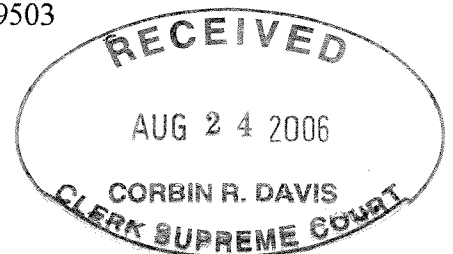


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LAW AND ARGUMENT

I. INTRODUCTION.

Plaintiff-Appellant respectfully takes this opportunity to reply to the brief on appeal filed by the defendant-appellee City of Grand Rapids and the amicus curiae brief filed by the Michigan Municipal League and Michigan Townships Association. Both the appellee's brief on appeal and the amici curiae brief include numerous arguments advanced in support of those parties' contention that "maintenance" is a subject which has been and ought to remain a subject of local control. While interesting and very capably advanced, these arguments do not bear directly on the question presented as framed by this Court upon granting leave to appeal or as framed by the factual circumstances directly involved in this case. Rather, they are arguments which more appropriately should be brought to the Michigan Legislature if, as plaintiff-appellant argues, the Stille-Derossett-Hale Single State Construction Code Act, MCL 125.1501, et seq., as amended by Pub Acts 1999, No. 245. *expressly* preempts the Grand Rapids Building Maintenance Code.

The opposing briefs also raise a number of questions and potential problems associated with the application of the International Property Maintenance Code. For example, the City of Grand Rapids points out at page 35 of its brief on appeal that the 2000 International Property Maintenance Code contained a prescribed maximum length of 10 inches for weeds and other plant growth, while the 2003 version of the code contains a blank to be completed by the enforcing jurisdiction concerning the maximum prescribed length. The Michigan Municipal League and the Michigan Townships Association point out at page 9 of their brief on appeal that the Michigan Residential Code, which applies to one- and two-family dwellings and most townhouses, contains no provision similar to § 101.4.5 of the Michigan Building Code which

provides that “the provisions of the International Property Maintenance Code shall apply to existing structures and premises . . .” In fact, according the Michigan Municipal League and the

Michigan Townships Association,

There is no requirement in the Michigan Residential Code that properties be maintained in accordance with the IPMC. In that regard, if the IPMC is the state law with respect to property maintenance, it applies only to structures other than one- and two-family homes and most townhouses.

(Amicus Curiae Brief on Appeal, p 9).

The question presented by plaintiff-appellant on appeal is not whether the International Property Maintenance Code is “state law with respect to property maintenance.” The question presented does not implicate the limits or application of the International Property Maintenance Code to one- and two- family homes, nor is the question presented here whether the International Property Maintenance Code is “the exclusive state law with regard to property maintenance” such that “the Housing Law of Michigan would have been repealed by implication.” (Amicus Curiae Brief on Appeal, p 9). Nor does the question presented involve maximum weed or plant growth height.

The question presented is whether the City of Grand Rapids may ignore the International Property Maintenance Code and enforce its own Building Maintenance Code against *non-residential* property such as the old fire station now known as the Engine House.¹ By its own terms, the Building Maintenance Code applies to “any person owning, occupying, managing or controlling any non-residential building in or adjacent to residential areas of the City as

¹ The word “non-residential” is highlighted to emphasize that this case does raise any issue concerning the applicability of the Michigan Residential Code. Nor does it implicate the Housing Law, since the engine house was not a “dwelling” under MCL 125.402(1) and is not “occupied in whole or in part as the home, residence, living or sleeping place of 1 or more human beings.”

identified by this Chapter.” (Section 8.204, **Apx 100a**). The question presented is whether the Stille-Derossett-Hale Single State Construction Code Act, MCL 125.1501, et seq., as amended by Pub Acts 1999, No. 245 preempts the Grand Rapids Building Maintenance Code which by its own terms is limited to non-residential structures.

II. THE STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT, MCL 125.1501, ET SEQ., AS AMENDED BY PUB ACTS 1999, NO. 245 PREEMPTS THE GRAND RAPIDS BUILDING MAINTENANCE CODE

A central argument advanced by both the defendant-appellee City and the Amici Curiae is that, since the International Property Maintenance Code is not expressly identified in MCL 125.1504(2), it was not adopted by the Legislature and presumably need not be enforced by local units of government who choose to enforce the Michigan Building Code.

The adoption of the International Building Code and the delegated authority to the director to make amendments, additions, or deletions as the director determines appropriate to establish a Michigan-specific version of that Code does not operate as an adoption of the International Property Maintenance Code simply because it is referenced in the Building Code. To the contrary, the IPMC was not included in the list of codes that would constitute the State Construction Code.

(Amici Curiae Brief on Appeal, p 17).

It is clear that the International Property Maintenance Code is not one of the six specific codes which comprise the state construction code. MCL 125.1504(a) [sic] In examining the plain language of this statutory section, “the maxim ‘*expression unius est exclusion alterius*,’ the expression of one thing is the exclusion of another,” means that the express mention of one thing in the Act implies the exclusion of other similar things. As the Act specifically listed six codes which comprise the state construction code, that express list of six codes necessarily implies the exclusion of all other codes not mentioned therein. The Act simply does not say that the International Property Maintenance Code is part of what comprises the state construction code. Therefore, the IPMC cannot expressly preempt the City’s Building Maintenance Code.

(Defendant-Appellee's Brief on Appeal, pp 13-14)(citation omitted).

Neither the defendant-appellee's brief on appeal nor the amici curiae brief on appeal articulate either why or how the Michigan Building Code achieved its status as the exclusive building code for use within the State of Michigan. Nor do either of these briefs afford the reader with a clear statement concerning how the Stille-Derossett-Hale Single State Construction Code Act, MCL 125.1501, et seq., as amended by Pub Acts 1999, No. 245 preempts local building codes relative to the erection of buildings. Instead, these briefs operate from the assumption without elucidation that local building codes relative to the erection of buildings are preempted by state law, but proceed to argue that codes relative to maintenance and repair are not preempted.

To the extent that defendant-appellee and the amici curiae may be understood to be arguing that the International Property Maintenance Code is not a "free standing" code akin to the Michigan Building Code or the other five codes identified in MCL 125.1504(2)², that issue simply is not presented by this appeal.³ In the present case, the Michigan Building Code applies to the Engine House, and the Michigan Building Code incorporates by reference the International Property Maintenance Code. For the very same, but unarticulated reason that the City may not have its own "building code," state law preempts the City from having its own "maintenance code" regulating non-residential structures.

² MCL 125.1504(2) provides that, "the code shall consist of the international residential code, the international building code, the international mechanical code, the international plumbing code published by the international code council, the national electrical code published by the national fire prevention association, and the Michigan uniform energy code with amendments, additions, or deletions as the director determines appropriate."

³ By "free standing," it is meant that one simply opens the code, looks to its provisions regarding scope and applicability, and proceeds to apply it. This is an issue very different from the issue in the present case where the International Property Maintenance Code is incorporated by reference and made directly applicable to the Engine House by the Michigan Building Code.

Section 101.2 of the Michigan Building Code provides in pertinent part:

*The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, **repair**, equipment, use and occupancy, location, **maintenance**, removal and demolition of every building or structure* or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the International Residential Code. [Emphasis added].

The Michigan Building Code expressly incorporates by reference the International Property Maintenance Code along with several other codes.

101.4 Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

* * *

101.4.2 Gas. The provisions of the *International Fuel Gas Code* shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

* * *

101.4.5 Property Maintenance. The provisions of the *International Property Maintenance Code* shall apply to existing structures and premises, equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

It is important to note that each of the above quoted provisions of the Michigan Building Code are found, verbatim, in the International Building Code. The legislative determination to

include the International Building Code as one of the six codes specifically identified in MCL 125.1504(2) for inclusion in the state construction code is direct and unequivocal evidence that the Michigan Legislature intended and approved of the Building Code's incorporation by reference and utilization of the International Property Maintenance Code. Defendant-Appellee City's invocation of "*expressio unius est exclusion alterius*" is, plaintiff-appellant respectfully submits, entirely inappropriate when one of the items in the list itself expressly includes as a sub item the very thing the City argues must necessarily be excluded.

In order to illustrate how the City's analysis would operate in contexts other than property maintenance, the above quotation from the Michigan Building Code includes section 101.4.2 which provides that, "the provisions of the *International Fuel Gas Code* shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code." The International Fuel Gas Code, like the International Property Maintenance Code, is not specifically included in the list of codes identified in MCL 125.1504(2) for inclusion in the state construction code. Under the City's analysis, the City could, should it choose, promulgate its own local fuel gas code and apply it to the installation of gas piping from the point of delivery to gas appliances and related accessories. If every referenced standard or code could be the subject of local variance under this construction, it would remove the very benefit of uniformity sought to be accomplished by the creation of a *single* state code. The fact is that the Legislature, had it chose to do so, could have made the maintenance provisions of the Michigan Building Code optional or subject to local variation. The Legislature did not do so, and this Court should not accept the City's invitation to redraft either the legislation or the Michigan Building Code itself.

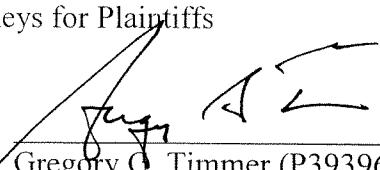
RELIEF REQUESTED

Plaintiff-Appellant James D. Azzar respectfully requests that this Honorable Supreme Court reverse the September 22, 2005 Opinion of the Michigan Court of Appeals, vacate the January 7, 2005 judgment of the Kent County Circuit Court, and remand to the Kent County Circuit Court for entry of judgment in favor of plaintiff-appellant.

RHOADES McKEE
Attorneys for Plaintiffs

Dated: August 24, 2006

By:



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